

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF MISSOURI

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| IN RE: |) | |
| |) | |
| RANDALL A. WILLIAMS, |) | Case No. 03-41115 |
| |) | |
| Debtor. |) | |
| |) | |
| CHRISTAL A. WILLIAMS, |) | Adversary No. 03-4303 |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| RANDALL A. WILLIAMS, |) | |
| |) | |
| Defendant. |) | |

MEMORANDUM OPINION

Plaintiff Christal Williams filed this adversary proceeding to object to the dischargeability of certain credit card debt awarded to her former husband, debtor Randall A. Williams, at the time of their divorce. This is a core proceeding under 28 U.S.C. § 157(b)(2)(I) over which the Court has jurisdiction pursuant to 28 U.S.C. § 1334(b), 157(a), and 157(b)(1). The following constitutes my Findings of Fact and Conclusions of Law in accordance with Rule 52 of the Federal Rules of Civil Procedure as made applicable to this proceeding by Rule 7052 of the Federal Rules of Bankruptcy Procedure. For the reasons set forth below, I find in favor of defendant/debtor Randall A. Williams.

FACTUAL BACKGROUND

Randall and Christal married on July 12, 1991. They have two children: Lauren born June 12, 1997; and David born February 6, 1992. On March 21, 2000, the Circuit Court of

Clay County, Missouri entered a Judgment of Dissolution of Marriage (the Decree) dissolving the marriage of Randall and Christal. Christal appeared with her attorney, but Randall did not appear, nor was he represented by counsel in the divorce. The parties executed a Marital Settlement Agreement (the Agreement), which was incorporated into the Decree, whereby Randall agreed to pay Christal \$800.00 per month for the support of Lauren and David. The Agreement also provided that Randall would pay to Christal a sum equal to one-half of the balance in his 401(k) plan. The Agreement awarded Randall two parcels of real estate: the marital home located at 530 Park Avenue, Excelsior Springs, Missouri; and rental property located at 907 Dorothy, Excelsior Springs, Missouri. The Agreement also provided that Randall would pay and hold Christal harmless for the following credit card debt: “Wachovia National Bank, First USA, Discover, MBNA.”¹ The Agreement did not recite the balances on these credit cards at the time of the divorce. The Agreement does provide, however, as follows:

Any debt not otherwise disposed of by this Property Settlement Agreement, which the parties or each of them have incurred, shall become the sole and separate obligation of the party who acquired such debt and that party shall hold the other harmless in the event of default, including the damaged party’s court costs and attorney’s fees.²

On February 26, 2003, Randall filed a Chapter 13 bankruptcy petition. On Schedule H, Randall listed Christal as a codebtor on an obligation to Wachovia Bankcard and First

¹Pl. Ex. # 1.

²*Id.*

USA Bank. On Schedule F Randall listed \$81,797.51 in unsecured nonpriority debt, including the following debts: (1) Wachovia National Bank with a claim for \$5,100.00; First USA Bank, FCC National Bank, with a claim for \$15,500; Discover Financial Services with a claim for \$7,000; and MBNA America Bank with a claim for \$36,000.

On April 17, 2003, Christal filed this adversary proceeding objecting to the discharge of the debts listed above. Christal argues that these debts were awarded to Randall in the Agreement, and that they are not dischargeable because Randall has the ability to pay them. Alternatively, she argues that these debts are in the nature of support. On October 31, 2003, this Court held a hearing. At the hearing both Christal and Randall testified.

Christal testified that she is employed and has net income of \$824.00 per pay period. She stated she is paid bi-weekly. In addition she receives child support for net monthly income of \$2,448.00. Christal stated that she and the children live with her mother, and that her average monthly expenses are \$2,453.00. She stated that she did not believe she was liable on the credit cards, even though she used them while married to Randall, because she was not employed during the marriage. She claimed that Randall told her he took cash advances on the credit cards to pay his child support during a period in 2001 when he was unable to work. She stated that on January 17, 2002, she received a collection letter from First USA Bank, N.A., and on June 17, 2002, she received a communication from National Action Financial Services, Inc. with reference to this same First USA Bank, N.A. account. At that time the balance due was \$12,877.35. This credit card appears to be in Christal's

name alone, though Christal testified that she does not recall ever applying for the card. If so, this obligation would not be one assumed by Randall in the Agreement, but in view of my decision that his credit card obligations are dischargeable, I need not decide whether this is a joint obligation.

Randall testified that he has been employed with National Starch & Chemical Company for 18 years. His earnings statement for October 18, 2003, shows gross year to date earnings, including overtime, of \$49,181.14. After deductions, including a deduction of \$103.31 per week for loan repayment to his 401(k), Randall has net year to date earnings of \$26,181.71. His net monthly income thus far for 2003 is, therefore, \$2,727.26 (\$26,181.71 divided by 9.6 months). His average monthly expenses at the time of filing were \$2,268.00. At the time of the divorce Randall incurred a loan from his 401(k) account in the amount of \$18,000 in order to pay Christal the one-half of the account to which the Agreement entitled her. As of June 30, 2003, the market value of Randall's 401(k) plan was \$49,391.69. The balance remaining on the loan as of that same date was \$8,683.10.

Randall testified at length about his medical condition. He is an insulin-dependent diabetic with attendant osteoporosis and circulatory impairment. Since 2001 he has suffered two broken legs and a broken arm. As a result, he has been unable to work for long periods of time. Nonetheless, he has maintained a continuous employment relationship with National Starch and Chemical, albeit with occasional leaves of absence. His employer provides health care coverage for Randall, David, and Lauren. Randall denied ever telling Christal that he

took cash advances on his credit cards in order to make his child support payments. He admits that he is in arrears in his child support in the amount of \$2,200.00, which occurred during 2001 when he was unable to work for an extended period of time. He proposes to pay the child support arrearage through his Chapter 13 plan.

DISCUSSION

Christal filed this adversary proceeding in two counts. In Count I she claims the credit card debts are nondischargeable pursuant to section 523(a)(15) of the Bankruptcy Code (the Code). In Count II she claims the debts are nondischargeable pursuant to section 523(a)(5). I begin with a discussion of section 523(a)(5), which provides that debts for maintenance and support cannot be discharged in bankruptcy:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

. . .

(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that—

(A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 402(a)(26) of the Social Security Act, or any such debt which has been assigned to the Federal Government or to a State or any political subdivision of such State); or

(B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support.³

The only evidence at the hearing that these credit card debts were in the nature of support was Christal's testimony that Randall took cash advances on the credit cards to make his child support payments. Randall denied those allegations. The truth of the allegations is not relevant to my decision here, however. In order for a debt to be nondischargeable under section 523(a)(5) it must be an obligation to a spouse or child that arose in connection with a divorce or separation. If Randall took cash advances on certain credit cards to pay his child support, he owes an obligation to the credit card company, not to Christal. Moreover, the debts that were so incurred arose after the Decree, thus, they are outside the ambit of section 523(a)(5). It is not clear to this Court why, after the divorce, Randall retained possession of credit cards upon which both he and Cristal were joint obligors. Both Randall and Christal testified that Randall was unable to work in 2001, therefore, he used his credit cards to pay many of his basic living expenses. But there is no evidence as to the credit cards he used or whether he increased the balances on the specific credit cards that he is obligated to pay. Thus, I have no evidence that Randall took any cash advances to pay his child support. And, if he did take such advances, I have no evidence of the credit cards he used, the dates of the withdrawals, or the amount. Moreover, Christal presented no evidence that the parties intended Randall's assumption of the credit card debt, whatever the balances might have

³11 U.S.C. § 523(a)(5).

been at the time, to be in the nature of support. I, therefore, find in favor of Randall as to Count II of the Complaint.

As to Count I of the Complaint, I note that this is a Chapter 13 case. Property settlement obligations are dischargeable in Chapter 13, provided a Chapter 13 debtor contributes all of his disposable income to his Chapter 13 plan and completes same:

(a) As soon as practicable after completion by the debtor of all payments under the plan, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title, except any debt--

. . .

(2) of the kind specified in paragraph (5), (8), or (9) of section 523(a) of this title.⁴

Since there is no provision in Chapter 13 to except a debt from discharge incurred pursuant to 11 U.S.C. § 523(a)(15), I will find in favor of Randall as to this Count as well.

An Order in accordance with this Memorandum Opinion will be entered this date.

/s/ Arthur B. Federman
Chief Bankruptcy Judge

Date:

⁴11 U.S.C. § 1328(a)(2).